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BIRTHS.

On July 2nd, at Dundee, Barker Road, to Mr. and Mrs. A. S. D. COOPER, a daughter. (1162) On May 22nd, at Portage Road, Kowloon, the wife of W. C. KENNEDY, of a daughter.

HONGKONG OFFICE: 10A, DES VOGES ROAD C. LONDON OFFICE: 131, FLEET STREET, E.C.

The Daily Press.

HONGKONG, JULY 3RD, 1907.

MANHIND finds its chief trouble, politically speaking, in squaring the differences that exist between its ethics and expediency, its ideals and daily existence, its professions and its practice. Allusion was made yesterday to this aspect of the situation in India, but the point could not be elaborated without too great a digression, from what was then the main theme. India is not by any means the only part of the world where anomalies and humbug are to be traced. At our own doors, practically, we have the Philippines, wherein the Americans are being torn asunder between their devotion to the highfalutin sentiments of their Constitution and their obligatory recognition of practical issues. Thence we are led to the Pacific slope, where Japanese and Chinese men are not included in the "all men created free and equal" maxim, and further inland we find the negro absolutely debased from that noble category. Nay, travelling still further to the great Eastern centres of civilization, we find a wide gulf between plutocracy and democracy in these communities of "free and equal" men. Crossing the Atlantic to Great Britain, we find similar sharp divisions between peers and people, though the high sounding professions are less insisted upon, and it is

only in the fallacy that there is not one law for the rich and one for the poor that we encounter open humbug. Our colony of Australia with its "white Australia" policy makes a determined bid for the suppression of the pious fraud, though we doubt not that the churches there use gilded terminology akin to the early phrases of the American constitution framers. Elsewhere we reprint from an American contemporary an article indicating that our cousins are beginning to feel the irksomeness of having these pious protestations thrown in their teeth. Instead of adopting the defiant attitude of the detected prayevictor,—"Very well, then, I lied. What are you going to do about it?"—they resort to the methods of the bibliolater, and strive to show that the awkward passages do not mean what they seem to mean. Very ingeniously they do it, too, getting right behind the minds of the men of Washington's day, and discovering, like lawyers with a typical ordinance, the original intention. "What they really meant," we are told, "was that the people of the colonies were as good as the people of England." They did not count Red Indians as men, nor negro slaves. "As a matter of fact, the statement as they meant it was true and self-evident, but as they stated it utterly erroneous and incapable of verification." Hum! Here, at all events, is clarity. "All men were not created free and equal" is the latest (American) gospel, so—and perhaps the implication is responsible for the philosophy—we may best keep in subjection our little brown brothers, may honestly stone John Chinaman, turn away our Japanese visitors, and refuse the suffrage to our Ethiopian fellow subjects. It will be mightily convenient to do that, is certain; but we do not agree that it should "help the American who is troubled in conscience." That glittering diadem of a glorious Constitution is either true or untrue, as it stands. Our Manila contemporary straightly labels it untrue, but would apparently evade the disagreeable necessity of throwing it overboard by admitting its truth in intention. There is the difficulty of the new theologians with miracle stories. We fear we cannot help them.

Five plague cases yesterday brought the total at date up to 132.

A Chinaman was yesterday found on his way back to the colony with five rounds of ammunition in his possession without a permit. He had just returned from San Francisco and was on his way back to the colony.

The Old Volume lecture to-night at the Park Hotel (see advt.) should not be overlooked. Mr. D. Le Sueur, Director of the Melbourne Zoological Gardens, is bound to be interesting on "Wild Life in Australia."

A dinner to celebrate the jubilee anniversary of the naval action at Fushan, Keespa Creek, and other engagements in the Canton River in 1857 took place on May 31st at the Whitehall Rooms. Admiral Sir R. Vesey Hamilton presided, and twenty-five other surviving officers were present.

The Colonial Secretary at Colombo has forwarded the Hongkong Colonial Secretariat the following information: "I am directed by H.E. the Governor to inform you that the port of Hongkong has been declared a plague infected port under the quarantine regulations in force in this Colony (Ceylon)."

The return of visitors to the City Hall Library and Museum for the week ending the 30th June, 1907, shows that of non-Chinese there were 329 to the Library and 117 to the Museum, and of Chinese 109 to the former and 2,187 to the latter. The Library was, therefore, used by 489 persons, and the Museum by 2,501.

Four men were brought before Mr. Crome at the Magistracy yesterday charged with surreptitiously obtaining a passage from Canton to Hongkong on board the s.s. *Futaba*. It appeared that the men had themselves amongst the vegetables which formed part of the cargo. They were each fined \$10.

Several newspapers comment [May 31] on the presence in Madrid of the Spanish Ambassador to Great Britain and Portugal, and of the Chief of the Spanish General Staff, who has been abruptly recalled from a tour of inspection which he was making in the Balearic Islands, and along the Mediterranean coast. It is asserted in Parliamentary circles that the Governments of Great Britain, Spain, and Portugal are conducting negotiations with a view to eventualities which may result from the present political situation in Portugal.

There is no scarcity of Dandycary mysteries. It is hard to understand why "National Righteousness" should spend so much on printing a special "Call to Prayer" for the abolition of the opium traffic, seeing that it believes, and says: "If, in some cases, only two can unite, the promise is as sure to them as to a thousand."—If two of you shall agree on earth as touching anything that they shall ask, it shall be done for them." Why not leave it to two, and save trouble and expense? How can there be "the awful possibility that our opium traffic may be maintained for several years longer" if "the promise is as sure" on such easy terms?

M. Cambon, French Ambassador in Berlin, telegraphed to M. Pichon announcing that he had communicated to the German Government, in accordance with his instructions, the broad lines of the Franco-Japanese Agreement. M. Jusserand, the French Ambassador in Washington, gave similar information to the United States Government. The British and Russian Governments have also been kept informed of the negotiations and their result.

The enterprises of three Chinese youths on Monday night did not meet with the success they anticipated. They were understood to be hawkers at Yau-mai but a hukong was astonished to find one climbing up a water spout in Reclamation Street, a second at the bottom ready to assist and the third on guard at the corner of the street. The last mentioned made his escape but the second was easily arrested and the one up the spout was so surprised that he dropped to the ground and fell into the arms of the hukong. Mr. Hazard yesterday sentenced both to three weeks' imprisonment and six hours' in the stocks.

After close investigation, the American Vice-Consul at Dally has reported on embarking and contacting the popular assertion that Japan is having it all her own way at Dally, the gateway of Manchuria. All goes, says this official, of all nations have the same opportunity, and are allowed to enter duty free at Dally. He admits that Japanese goods constitute the bulk of the arrivals, and that the Japanese have natural advantages, but on the question of the open door for trade in Manchuria he is decidedly optimistic. The Vice-Consul reported, as the result of American complaints, that the Japanese are crowding everybody out of the Chinese trade market.

Having noticed that on several occasions you referred to the doings of the Japanese and Eastern Corporation, in which I am unfortunately a debenture-holder for quite a considerable amount (writes a correspondent to the *Globe*) I should like to ask whether it would not be possible for steps to be taken to secure the holding of an early general meeting. It is now 20 months since the Corporation issued its debentures, and beyond the usual trap circular away from the doorstep of the company's office for a few days, no single figure has been placed before us. Meanwhile the debentures are practically unobtainable; nominal quotation, about 10s.; issue price 25s. I consider it high time the directors, who draw £30 a piece per annum, were required to render an account of their doings.

A subscriber sends the *San Francisco Chronicle* an extract from a personal letter describing the condition of affairs in China, in which the writer gives the students sent from that country to Tokyo a very bad name. She says they are all stuffed with the writings of Huxley, Darwin, and "other noted infidels," and that they return to their native land a godless lot whose chief desire is to overturn the Government. She declares that the Government is alarmed at the student movement, and it may well be if the implication that Japan is filling them with rebellious ideas is true, for that would mean that sooner or later the dynasty now in power must go, for it is hardly conceivable that the Japanese would otherwise take the trouble to set the subjects of a neighbouring nation against their rulers unless she intended to accomplish their overthrow.

In the House of Commons on May 31st, Mr. Buxton, having been asked by Col. Lockwood whether, under present arrangements for sending parcels by parcel post to China from England, they can only be insured as far as Shanghai unless forwarded by a German boat; and, if so, whether he will take steps for securing for British trade the advantage possessed by other nations, says:—Parcels from this country for China sent by British packet can be insured as far as any place at which there is a British postal agency. Such agencies are maintained at Amoy, Canton, Chifu, Fuchai, Han-kai, Hsiao-shan, Ningpo, Shanghai, Swatow, Tientsin, and Wai-lai-wai. The only insured parcels sent by the German service are those addressed to places at which there are German agencies, but no British agencies—namely, Tientsin, Nanking, Peking, Tschukiang, Tsinanfu, and Weichow, as well as the Kientschou Protectorate. Negotiations have already been begun with a view to the extension of the British parcel post arrangements with China.

HONGKONG SANITARY BOARD.

At a special meeting of the Sanitary Board held at noon yesterday the Hon. Dr. Atkinson (president) presided. There were also present Hon. Mr. W. Chatham, O.M.G. (Vice-president), Hon. Mr. A. W. Brown, R. Registrar-General, Dr. F. Clark, Medical Officer of Health, Mr. A. Shilton-Hopner, and Mr. G. A. Woodcock (secretary).

The meeting was called on the recommendation of the Medical Officer of Health whose minute read as follows:—I have the honour to recommend that a special meeting of the B. and S. be called for Tuesday next to release the sheds at the Dairy Farm Company's premises which were declared infected last month. The farm is now entirely free of infection and the disinfection of the sheds was commenced yesterday, and will be completed on Monday. The company are not able to utilize the milk of the animals which have recovered until the Board releases the premises, and the matter therefore can hardly be allowed to stand over until the regular meeting to be held on the 8th inst.

The President moved that the premises be declared free of infection. Mr. SHILTON-HOPNER seconded, and the motion was agreed to. The meeting then ended.

TELEGRAMS.

["DAILY PRESS" EXCLUSIVE SERVICE.]

UNION JACK CLUB.

LONDON, July 2nd.

The King and Queen have opened the Union Jack Club. This new London institution starts free of debt.

JAPAN AND AMERICA.

Tokyo, July 2nd.

It is suspected in America that the Tokyo circular of the Chambers of Commerce implies a threat to boycott American goods. Efforts are being made here to restrain the political parties' utterances on the latest development pending Government action.

[REUTERS SERVICE.]

BALLOON RACE.

LONDON, June 30th.

Eleven balloons started from Ranelagh yesterday on a long distance race in Great Britain.

LATER.

The balloon race from Ranelagh was a failure owing to a high level of rain. The balloons descended in the suburbs, except one which descended at Worthing.

THE UNITED STATES AND JAPAN.

LONDON, June 30th.

The correspondent of the *Times* in New York writes that the police in San Francisco have refused five applications for renewals of permits to Japanese Employment Agencies. This action is probably more serious than the exclusion of Japanese children from the schools.

THE PEKING-PARIS MOTOR RACE.

LONDON, June 30th.

The French trier has been abandoned at Goli [?] in the [?] desert, for want of petrol. The occupants are at Nankow, [?] Hankow] and will go to Peking by train.

FRENCH SHIPPING.

GREAT STRIKE BEGINNING.

The state of the French shipping strikes on May 31st is indicated by the following messages, all bearing that date.

A telegram received from Marseilles states that a general strike has been proclaimed among the Marseilles Maritimes, or Naval Reservists. The Marseilles correspondent of the "Matin" says, with regard to the subject of the strike among Naval Reservists, that it is believed the strikers' navigation companies will preserve a strict neutrality towards their personnel. The effect of the strike about to break forth in all the French ports will be enormous as regards industry and commerce, business transactions being rendered impossible.

Harve reports: A general shipping strike was declared here to-day, and the crews of all the mail steamers have left their ships. The Transatlantic liners "La Provence" and "La Gorgone" will, in consequence, be unable to depart from here.

Marseilles added: Up to nine o'clock, this morning, the crews of eight mail steamers, belonging to different companies, had landed and handed in at the Naval Reserve offices their notices to strike. Five steamers will leave to-day, including vessels for New York and London. The fishermen have also handed in strike notices, and the movement is general. So far, no disorders are reported.

VICEROY TSEN'S "FACER."

The Board of Finance has opposed Viceroy Tsen's proposal to raise a foreign loan for Kwangtung. One of the members put the searching question.

May I ask whether Viceroy Tsen will guarantee us that he will retain his post long enough to repay the loan?

Viceroy Tsen was unable to say anything in reply, and the matter dropped.

Before Viceroy Tsen left Peking their Majesties cautioned him again, being too harsh with the people and to be very careful how he exercised his power. This warning was considered necessary because Tsen in the past has been greatly addicted to slaughtering on slight provocation. —*Tientsin Times*.

WEATHER REPORT.

The Hongkong Observatory yesterday issued the following report:—On the 2nd at 12.05 p.m.—The barometer has risen moderately over N. China, and fallen a little in Central Japan. The depression in the North appears to be moving into the Sea of Japan. Pressure remains high and in slight excess of the normal over the Philippines. Fresh S. monsoon may be expected in the Formosa Channel, and the N. part of the China Sea. Hongkong rainfall for the 24 hours ending at 10 a.m. to-day, 0.15 inches.

The forecast for the 24 hours ending at noon to-day is as follows:—
Hongkong & Neighbourhood (*) Same as No. 1.
Formosa Channel Same as No. 1.
South coast of China between Hongkong and Loo-choo Same as No. 1.
South coast of China between Hongkong and Hainan Same as No. 1.
(*) S. to S.W. winds, fresh or strong; squally, thunder showers.

CORRESPONDENCE.

THE CUBICLE QUESTION.

[TO THE EDITOR OF THE "DAILY PRESS."]

SIR,—With reference to the above question which is at present occupying the attention of our Legislators the following proposals with regard to dealing with cubicles as applied to existing houses, may not be out of place.

Mr. Osborne is no doubt, right when he says "we have to have them," therefore the only question to be solved is how to make them as little objectionable as possible. The Government when dealing with this question must be prepared to give a little, if they are to receive anything in exchange and where, in my opinion, they should be prepared to give, is with regard to the "external air" or the 13-foot clause of the existing Ordinance. I am quite convinced in my own mind that a hard-and-fast rule cannot be laid down to regulate for cubicles or rooms in existing houses, and that every house must be taken on its own merits; and, therefore, the Government must be prepared to give a certain amount of latitude when dealing with this matter. The erection of cubicles or rooms should not be refused in a house, where, say, it is impossible to obtain within a foot or two the exact floor area as laid down by the Ordinance, but what might be insisted on is that an owner should do the best that is possible with his house, and if, when a plan is sent in which the Government considers could be improved upon, it should be returned for amendment.

Now it seems to me that for windows to cubicles or rooms to open into a space of 13 ft. should not be made a *straw man* for the existence of such cubicle or room. My own personal experience makes me think that the great point to be acquired is that cubicles should have a window opening into the external air, and to obtain this I propose that an area should be laid in the centre of the house, the width of the area to depend upon the length of the house.

I attach plans showing my proposal as applied to two, say, common types of houses, one a seven-foot house with a kitchen and area of 50 square feet at the back, the other a fifty-foot house with half kitchen and half area in the rear. [We publish these plans as a supplement. —Ed.]

In the former case I propose to cut an area 10 feet wide in the centre of the house through out its height. This will have the effect of lighting the centre of the ground floor as well as the upper floors.

On the first floor (if the Government are prepared to waive the 13-foot clause) we can obtain four rooms all having windows opening directly into the external air and two cubicles without windows. The two halves of the house would be connected by a bridge, on to which windows cut down to the floor level would open. Under the Ordinance as at present, this house could only have three cubicles or rooms; even if the 13-foot clause were waived. My scheme under similar license admits six. The same arrangement applies to the top floor.

The fifty-foot house is treated in a similar manner but with a six-foot area, admitting of four rooms all with windows opening into the external air. I do not pretend that this scheme is a perfect one and there exists a slight objection on the first floor in the case of the inmates of the upper floor having to pass over the bridge from one staircase to the other. But the actual staircases would be shut off from the rooms by wood screens as is the present custom, and I think this objection would disappear when the inmates had got used to the arrangement. On the top floor this objection would not occur.

There is no doubt that this scheme would not be as effective as that proposed by the Hon. Mr. Chatham by pulling down the upper storeys of every third house, but I submit that mine is much simpler and less expensive. His scheme gives no benefit to the ground floor and involves resumption, whereas in this scheme the owner retains both house and land, and instead of weakening the houses, as in Mr. Chatham's scheme, the introduction of cross walls is a considerable addition of strength. On the ground floor the area would be formed by building two arches which would carry the walls above.

The whole question hinges on whether the Government (with regard to existing houses) are prepared to waive the present law, that a room to be habitable must have a window opening into a space of 13 feet. In my own opinion it is far more important to get landlords to provide a type of house where it is possible to get a number of rooms, each with a window of its own opening into the external air, than to insist on the present rule by which it is impossible in ninety-nine houses out of a hundred to provide more than one room and one cubicle, and where the rest of the house is divided up by means of filthy hangings supported by bamboo hung from the ceiling. I am, Sir—Yours etc.

H. W. BIRD.

Definition of a cubicle from Public Health and Buildings Ordinance:

Cubicle means any portion of a room which is partitioned off for the purposes of being used as a sleeping place, and which is not provided with a sky light window or windows of its own (independently of the window area of the room in which such cubicle is erected) opening either directly or across a verandah or balcony with the external air etc.

LATEST STEAMER MOVEMENTS.

The I.G.M. str. *Roon* left Foochow on the 1st July at 8 p.m., and may be expected here to-day at daylight.
The H.A.L. str. *Scandin* left Singapore on 1st July at 4 p.m., and may be expected here on 6th July p.m.
The P. & O. str. *Sinla* left Singapore for this port on the 2nd July at 12.30 p.m.

SUPREME COURT.

Tuesday, July 2nd.

IN ORIGINAL JURISDICTION.

BEFORE SIR FRANCIS PIAGOTT (CHIEF JUSTICE).

EXTENDING AN INSURANCE COMPANY'S BUSINESS.

The Hon. Mr. H. E. Pollock, K.C., made an application to His Lordship the Chief Justice this morning with respect to the Man On Insurance Company.

Mr. Pollock said the application was for the confirmation by the Court of certain resolutions which had been passed with a view to extending the Company's business. The objects of the Company, as set out in the petition, included the business of a Marine Insurance Company. Resolutions had been passed, and confirmed, extending the powers of the company to include fire as well as marine insurance, and also giving the Man On Company power to re-insure any risk, either in whole or in part. That would relate to either class of insurance; it was frequent for insurance companies to re-insure.

His Lordship said the company has power to re-insure marine, it will be limited to fire, so as not to include life.

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Mr. Pollock referred to a special case in which wide extension was allowed. The Alliance Marine Insurance Company applied for extension to life, fire and accident. There was evidence that such businesses were commonly transacted by marine insurance companies, and similar affairs had been filed in this case.

His Lordship said I think I ought to be satisfied with the capital. It seems to me that the capital is very small in this case. It is only \$1,000,000, and only half has been paid up. One of the conditions undoubtedly would be to call up the outstanding capital. I could not possibly do it otherwise; the responsibility is too great. A judge has no training in these matters, and the Legislature has thrown upon him a very great responsibility. I must be satisfied with the capital, and cannot treat these things as merely formal.

An adjournment until July 16th was granted.

AN ARBITRATION CASE.

Judgment was delivered in the matter of the arbitration between the executor of the late Mr. Choy Chan and the executors of Choy Chan deceased and Tean King, contractor.

Mr. M. W. Slade, instructed by Mr. Holbrow of Messrs. Deacon, Looker and Deacon, appeared for the plaintiffs, and Sir Henry Barkley, K.C., instructed by Mr. Hurlstone, appeared for the defendant.

His Lordship said: I am of opinion that although it was stipulated in clause 18 of the contract that time was especially to be considered as of the essence of both contracts, yet that time condition was departed from by the future provisions of the clause. Those seem to me to have been based on the idea that the time specified for completion was not to be of the essence of the contract; for it was clearly in the contemplation of parties that the time specified for completion would not be complied with even in the case of there being a new date for completion substituted—such substituted date being fixed in writing by the engineer. In the event of the contract not being completed on the original or substituted date there is a condition precedent to the right of the principal to the payment of liquidated damages: this condition precedent being the issue of a certificate in writing by the engineer that the work could reasonably have been completed by the original or substituted dates. The certificate in this case seems to differ materially from those dealt with in the cases cited in Hudson which are for the most part certificates, the issue of which may or may not be conditions precedent to payment. In the first place I think that the statement made by the arbitrator in paragraph 10 of the special case to the effect that he is satisfied upon the evidence which has been adduced before him in the arbitration proceedings that there has been unreasonable delay on the part of the contractor in carrying out the works, and that damage has been sustained by the executors of the principal by reason of such delay, is not the certificate contemplated by clause 18. In the first place that certificate is to be given by the engineer and although Mr. Danby continues in himself the twofold capacity of engineer and arbitrator, and although further the Courts decline to relieve the contractor from any grievances which he thinks he may have owing to this, except in a very extreme case, because he has deliberately chosen to accept the contract subject to this condition, yet this cannot be pressed so far against the contractor as to substitute merely Mr. Danby as the arbitrary judge of everything. So far as it is possible Mr. Danby, the arbitrator, must be kept distinct from Mr. Danby, the engineer, and what the latter has to do cannot be done by the former, nor can the former do what the latter has left undone. Owing to the way in which clause 18 is drafted there is no difficulty in this instance in keeping Mr. Danby's two functions quite distinct. He is not required to certify that there has been unreasonable delay in completing the work; but

that the work could reasonably have been completed by the date of completion, original or substituted. It is clear to me that the work was not completed on the given date, the duty of the engineer was then and there to certify that they could reasonably have been completed at that date. What Mr. Dantley has done is an arbitrator, after having been called on to express an opinion as to the reasonableness of the delay. I am of opinion that he had no right to do this. Further there is no substituted date within the meaning of the contract, none having been fixed by the engineer. Therefore, so far as contract No. 476 is concerned, the certificate should have been given within a reasonable time after January 25, 1902. I, therefore, answer the first question in the affirmative, subject to the interpretation I have just given of the meaning of substituted date which affects the meaning of the last words of the question, "or any substituted date." There is however a further question as to contract No. 476. So far as contract No. 476 is concerned, I answer the question in the negative, for the reasons given above, and the third question must also be answered in the negative. The fourth question has no reference to this contract, but the answer to the fifth question, so far as this contract is concerned, is in the affirmative. But so far as contracts Nos. 474, 475 and 476 are concerned, the answers to questions two and three must depend on the answer to question four, which involves the interpretation of the Chinese agreement of July 1904, 1903, which is set out in paragraph 9 of the special case. By this agreement the parties themselves substituted April 15th, 1904, as the date on which contract No. 476 was to be completed. I am of opinion in the first place that this agreement undoubtedly nullified clause 18, so far as the liquidated damages are concerned and it must, therefore, nullify the clause so far as the engineer's certificate is concerned. The damages for failure to complete on April 15th, 1904, must be arrived at by interpreting this agreement. By it, if the shops are not handed over by April 15, 1904, they shall then require Tsang King to compensate to Chey Chan \$3,000 for the first month of the building contractor's overtime and \$600 for the second month. What the parties intended by this I have not the remotest idea. I must, however, endeavour to ascertain its legal effect. Does it mean \$6,000 for the second and subsequent months? Clearly not. Then are there two amounts, singly or collectively, a penalty or liquidated damages? To my mind the very fact of there being two different sums for the first and second months shows that they could not be treated as liquidated damages. They certainly are not a genuine pre-estimate of the amount of damages likely to be suffered (see Commissioners of Works v. Hill). For I cannot see how such a sum can vary in respect of two consecutive months. They are a penalty and, therefore, I think the law is that the plaintiff may either take the penalty or recover the damages he has in fact suffered. The answer to the fourth question is, therefore, that damages may be recovered under the Chinese agreement for delay in not completing the contract by April 15th, 1904. The answer to the fifth question is in the affirmative, though I feel considerable doubt as to the view of the substitution of the Chinese agreement. The answer to the sixth question is in the affirmative with regard to both contracts taken together.

IN APPELLATE JURISDICTION.

BEFORE THE FULL COURT.

CHAN WO AND OTHERS v. CHAN TAM.

Their Lordships delivered judgment in this action in which the plaintiffs were the appellants, and the defendant respondent, the appeal being against a judgment of His Honour the Puisne Judge.

Sir Henry Berkeley, K.C., and Hon. Mr. H. E. Pollock, K.C., instructed by Mr. C. D. Wilkinson of Messrs. Wilkinson and Grist, appeared for the appellants, and Mr. M. W. Slade, instructed by Mr. G. K. Hall Brutton (of Messrs. Brutton and Hottel), represented the defendant.

After the appellants had concluded their argument the Chief Justice intimated that he did not wish to hear Mr. Slade (for respondent) and said: Now, this appeal was put to me in this way. The balance of probabilities is not in favour of the learned Puisne Judge thought they did and the question put to us first was: Was it more likely that the debts were exclusive or inclusive? Unless the case can be put higher than this the appeal must fail, because it falls within the principle of doubt in the case just quoted, and not only fail, but I think, be dismissed. I pointed this out to the learned counsel and afterwards the ground for appeal was put down to the fact that the debts could not have been excluded. I find it difficult to keep off the question of probabilities, because they figured so largely in argument. It seems to me that the probabilities are that if the vendor wished to exclude special debts he would have inserted paragraphs to that effect in the agreement, and if he meant to include there was no necessity for such paragraphs. He did insert the clause which shows very clearly what was in his mind. The accountants' evidence agrees with this. As to the form of agreement when drawn up, that shows that Chan Yam certainly had it in his mind, to exclude special debts. There is also the probability that if the purchaser had intended them to be excluded he would have asked—Why did you introduce this sentence? I admit that he might have forcibly effected his end by altering exclusive to inclusive, if defendant agreed, but this leads us to another probability. It is more than probable it seems to me that the vendor would have thrown in what was called a bad debt for no consideration. We know that it was not strictly speaking a bad debt, but only one very much in

suspense. That there was no consideration for it is manifest from plaintiff's own evidence. His version of the case is that \$250 was to be paid for signboards, eighty-five per cent for the Australia debts and the other debts at face value. It is impossible to give a face value to these Wa Tai debts, therefore, the plaintiff says he was going to get them for nothing, which is highly improbable. The plaintiff's evidence supplies the key to what was passing in his mind. I wanted to know what the legal expenses would be before I accepted and Chan Yam refused to tell me. He said that if they did not alter the draft of the agreement from exclusive to inclusive they would have to pay him expenses. For the life of me I cannot follow it. If the debt had been included the purchaser would have taken over the debt and the consequent liabilities. What he really wanted was to get rid in some way or other of his share of the liabilities. The probabilities or facts are entirely with defendants and in favour of exclusion. With regard to advertisements each party was at liberty to insert one, and an inference had been drawn from the fact that the debts or rather their exclusion was not mentioned. Nor, may it be marked, was their inclusion. Too great an inference had been drawn from the advertisement.

After referring to other exhibits His Lordship concluded: I entirely agree with the finding of the learned Puisne Judge.

The Puisne Judge—This is an appeal from a decision of my own (sitting in Original Jurisdiction). The question arose on the transfer of the business, etc., of the Wah Hing Loong firm by some of the partners to the other partners. In the original draft of the memorandum of such transfer certain debts due to the Wah Hing Loong by the Wah Tai and Fung Shing firms were excluded. This admitted that this draft was altered and in the document produced in Court and sued on those debts were included, so that the question before the Court was whether that alteration was made before or after execution. I was of opinion that it was made after, and, therefore, of course, fraudulent and a forgery, and I gave judgment accordingly for the defendants with costs. Whatever doubts I may have had or am supposed to have had on that point at that time, I have none now. This opinion was and is mainly based on the evidence of the plaintiff himself and his witness (the accountant). The plaintiff stated that previous to the date of the agreement the parties had not consulted and arranged that an account was to be made out that the prices agreed upon excluded those debts, and it is obvious that the plaintiff was a party to that agreement. Further where the plaintiff goes in to give reasons for such exclusion, that the Wah Tai had a counter claim for \$15,000 against the Wah Hing Loong, and they were evidently in fear and trembling that that claim might be successful and in that case their claim against the Wah Tai would be swamped and the Wah Hing Loong would be ruined. The accountant stated that he drew up exhibits and delivered the Fung Shing debts (which of course included the Wah Tai debts, as both stand on the same footing so far as this case is concerned), and he further states that on that basis the agreement was drawn up. It is, therefore, clear that up to the date of the execution of the assignment or possibly a short time before the plaintiff had agreed for the exclusion of these defendants. He then says he changed his mind at the twelfth hour. I must say if the case had ended there and there was no further appearance on behalf of the defendants I should have had to give judgment for the plaintiffs. I should have done so with great reluctance. Of course what happened was that when the plaintiff began to think that those debts had some value he, with his accountant, altered the assignment. On the appeal Mr. Pollock laid stress on certain exhibits. One was the advertisements inserted by the plaintiff and defendants respectively, and it is true that they contain no reference to the exclusion of these debts, and it was, therefore, argued that this was evidence in favour of the contention that the alteration was made in the assignment before execution. As to the exhibit 4, this had been characterised either directly or inferentially by the defendant and his witnesses as a forgery. Mr. Pollock argued on this point that it was highly improbable the plaintiffs should have unnecessarily gone in for forgery on such a large scale and pressed the point that there was no object or reason for such forgery and, therefore, that, if the Court came to the conclusion that exhibit 4 was not a forgery, this would throw such discredit on the evidence for the defendant as a whole that the court could not hold that the assignment was a forgery, as it would be, if the defendants' contention was correct. Although I agree that the authority or falsity of the defendant's evidence as to exhibit 4 has a bearing on the credibility of the defendant's evidence as to the assignment, yet holding, as I do (on this evidence as a whole) that the alteration in the assignment was made after execution, I cannot think (supposing for the sake of argument) the defendant's evidence as to exhibit 4 to be false that the absence of mention of exclusion in the advertisements under the special circumstance of this case and false evidence as to exhibit 4 can deprive the defendant from succeeding in the action on the main points as to whether the alteration in the assignment was prior or subsequent to execution, my decision as to which is mainly based on the evidence given by, and on behalf of, the plaintiff. I think the appeal should be dismissed with costs.

HOW TO BE BEAUTIFUL—Keep your complexion, Mrs. Ellen's Crème Charman, Lait Charman and Special Skin Tonic and Poudre Charman will enable you to do it. Har Specialties for the Skin are the study of a lifetime. A.S. Watson & Co., Ltd., Sole Agents

LAW REPORT, MAY 31.

HOUSE OF LORDS.

(Before the LORD CHANCELLOR, LORD MACNAGHTEN, LORD ROBERTSON, and LORD ATKINSON.)

POOLE AND OTHERS v. THE NATIONAL BANK OF CHINA (LIMITED).

The following is the judgment of Lord Macnaghten in this case, the decision in which was reported in *The Times* of May 29th, and by us reprinted.

LORD MACNAGHTEN.—I quite agree with my noble friend on the bench that the question of a fund must be dismissed. I venture to add a few observations, because there seems to be a growing tendency to narrow and restrict the power to reduce capital conferred by the Act of 1867 on companies limited by shares. That tendency is a parent, I think, in the judgment of the Court of Appeal in the present case and particularly in the addition which that Court has made to the order pronounced by Mr. Justice Farwell. The power conferred by the Act of 1867 is perfectly general. Any restriction upon it not authorized by the Act of 1867 is for the Act of 1867 is calculated, I think, to lead to inconvenience and expense, and to hamper and embarrass companies in the conduct of their domestic affairs. The subject of reduction of capital was fully considered by this House in 1894 in the case of "British and American Trustee and Finance Corporation v. Cooper" (L.R. 1894, A.C. 339, 63 L.J. Ch. 425). In that case Lord Herschell, after referring to the Acts of 1857 and 1877, said:—"It will be observed that neither of these statutes prescribes the manner in which the reduction of capital is to be effected, nor is there any limitation of the power of the Court to confirm the reduction except that it must first be satisfied that all the creditors of the company have been paid or secured." Later on, dealing with the case before the House, he says:—"The interests of creditors are not involved, and I think it was the policy of the Legislature to entrust the prescribed majority of the shareholders with the decision whether there should be a reduction of capital, and, if so, how it should be carried into effect." By way of caution he adds this observation:—"There can be no doubt that any scheme which does not provide for uniform treatment of shareholders whose rights are similar would be most harshly scrutinized by the Court, and that no such scheme ought to be confirmed unless the Court be satisfied that it will not work unjustly or inequitably. But this is quite a different thing from saying that the Court has no power to sanction it."

LORD WATKINS takes the same view. His words are these:—"Apart from the interests of creditors, the question whether each member shall have his share proportionately reduced or whether some members shall retain their shares unreduced, the shares of others being extinguished upon their receiving a just equivalent, is a purely domestic matter, and it might be greatly for the advantage of the company that the latter alternative should be adopted." Speaking for myself, I see no reason to alter or modify what I have just said. "Creditors," I observed, "are protected by express provisions. This consent must be procured or their claims must be satisfied. The public, the shareholder, and every class of shareholders individually and collectively, are protected by the necessary publicity of the proceedings and by the discretion that is entrusted to the Court. Until confirmed by the Court the proposed reduction is not to take effect, though all the creditors have been satisfied. When it is confirmed the memorandum is to be altered in the prescribed manner, and the company, as it were, makes a new departure. With these safeguards, which certainly are not inconsiderable, the Act apparently leaves the company to determine the extent, the mode and the incidence of the reduction and the application or disposition of any capital moneys which the proposed reduction may save."

Such being the views expressed in this House without any dissent or qualification, I was surprised to hear it argued by the learned counsel for the appellants that the Court has no jurisdiction to entertain a petition for the reduction of capital, unless it be proved that the capital which the company proposes to cancel is lost or unrepresented by available assets. No doubt some countenance for that proposition may be found even in cases which have occurred since the decision of this House in "The British and American Trustee and Finance Corporation v. Cooper." In the "Barrow Hematite Steel Company" (1900, 2 Ch. 846; 69 L.J. Ch. 809), where the scheme proposed was obviously unfair to the preference shareholders and the petition was very properly dismissed, there are some expressions in the judgment of the learned Judge who gave the decision, taken apart from the context, which seem to support that contention. The decision of Mr. Justice Buckley in "In re Anglo-French Exploration Company" (18 The Times Law Reports, 751; 1907, 2 Ch. 845) goes even further. His language, if correctly reported, seems to imply that because the Act of 1877 specifies certain cases and declares that the power conferred by the Act of 1867 "includeth" those specified, it is to be inferred that in all other cases the jurisdiction of the Court is excluded. If that is the meaning of what the learned Judge said, with all respect, I am unable to agree with his view. The condition that gives jurisdiction is not proof of loss of capital or proof that capital is unrepresented by available assets, or that capital is in excess of the wants of the company. The jurisdiction arises whenever the company seeking reduction has duly passed a special resolution to that effect. In the present case the proposed reduction of capital is not a reduction in respect of unpaid capital or the payment to any shareholder of any paid-up capital. The only questions, therefore, to be considered are these:—(1) ought the Court to refuse its sanction to the reduction of capital in the interests of the members of the public who may be induced to take shares in the company? and (2) is the reduction fair and equitable as between the different classes of shareholders? Now the directors gave the shareholders the full and accurate information as to the reasons for the reduction and the causes which led them to propose it. All this is explained in the petition. It has not been suggested that the proposed reduction is open to any objection on public grounds. The question, therefore, must be this: Is it fair and equitable as between the different classes of shareholders? Now the directors gave the shareholders the full and accurate information as to the reasons for the reduction and the causes which led them to propose it. All this is explained in the petition. 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Hongkong, 13th April, 1907. 38-1

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NORTH BRITISH AND MERCANTILE
INSURANCE COMPANY.
TOTAL FUNDS at 31st December, 1905
£17,537,119.

I. AUTHORIZED CAPITAL... £3,000,000
SUBSCRIBED CAPITAL... 2,750,000
PAID-UP CAPITAL... 587,500 0 0
II. FIRE FUNDS... 3,386,729 19 8

The Undersigned, AGENTS for the above
Company, are prepared to ACCEPT RISKS
against FIRE at Current Rates.
SHEWAN, TOMES & CO.,
Agents.

Hongkong, 27th April, 1907. 1116

THE GLORIOUS INSURANCE COMPANY
OF HAMBURG.

THE Undersigned, having been appointed
AGENTS for the above Company, are
prepared to ACCEPT RISKS against FIRE
at Current Rates.
CARLOWITZ & Co.,
Agents.

Hongkong, 13th August, 1906. 29

AACHEN AND MUNICH FIRE IN-
SURANCE CO.

OF AIX LA CHAPELLE.

THE Undersigned, having been appointed
AGENTS for the above Company, are
prepared to ACCEPT RISKS against FIRE
at Current Rates.
REUTER, BROCKELMANN & Co.
Agents.

Hongkong, 21st April, 1897. 114

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Auctioneer. Consignments solicited. Account
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Hongkong, 21st September, 1903 778

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MESSERS. HUGHES AND HUGH have
instructions to Sell by Public Auction
On THURSDAY,
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(Corner of Lee House Street),

THE VALUABLE LEASEHOLD PROPERTY

Registered in the Land Office as—
The Remaining Portion of Subsection No. 1,
of Section A of Main Lot No. 95, and the
Remaining Portion of Section A of Island
Lot No. 1310 with the Premises thereon
known as Nos. 303, 305, 307, 309 and 311,
DES VAUX ROAD WEST, Victoria. The
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feet. The total Crown Rent is \$43.50.
Particulars and Conditions of Sale may be
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Hongkong, 23rd June, 1907. 1133

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worms. It is
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FINDING PEARLS BY "X" RAYS.

AN INTERESTING VISITOR TO HOBE.

There is no limit to the application of science
for commercial purposes, and the latest use to
which the wonderful "X" rays has been put,
in relation to pearl fishing, is of great interest
to this country. Last month Mr. John I.
Solomon, of New York, who has been in Ceylon
for some months experimenting, called at the
Japan Chronicle office, and in the course of an
interesting conversation gave some particulars
of the history of his remarkable invention by
which pearl oysters can be examined without
being opened and those containing immature
pearls can be replaced in the sea without injury
to await further natural development. As will
be seen, the system has been tried with great
success in Ceylon, but an account of the
attitude of a local pearl fishing company, Mr.
Solomon has been forced to seek a more pro-
mising field in some other pearl-producing
country. It is not at all improbable that some
enterprising Japanese will quickly recognise
the advantages of the new system, and that it
will be adopted in the pearl fisheries in southern
Japanese waters.

Mr. Solomon is an electrical engineer by pro-
fession, but has for some years taken a keen and
practical interest in the scientific development
of the pearl oyster. In the course of his quest
for information with view to putting into
practice a bold and daring scheme for con-
servancy of the life of the pearl-producing
oyster, Mr. Solomon was brought into
communication with Mr. William Morey,
the former Consul of the United
States in Colombo, and through him, into
correspondence with a late official of the Ceylon
Government, who is now prominently connected
with the Ceylon Company of Pearl Fishers, Ltd.,
and, chiefly on the advice of this gentleman, he
was induced to go to Ceylon and commence
operations. It is important to bear in mind
that these negotiations commenced before the
Ceylon Government had taken its fisheries to
a private company. Matters were in a transi-
tional state but this, so far from having any
effect in the way of suspending the negotiations,
was actually used as an argument in favour of
facilitating the arrangements whereby Ceylon
was chosen as the first venue for these world-
embracing operations, which, if successful,
were to be extended to other pearl producing
countries.

With that object in view Mr. Solomon
applied for patents for his process and certain
machinery and apparatus employed in the
process and secured after the usual delays full
protection for his idea, not only as far as Ceylon
is concerned, but in all other pearl-producing
countries as well. Mr. Solomon was led clearly
to understand from the start that the change in
the conditions under which the Ceylon pearl
fisheries would in future be conducted would in
no way be prejudicial to the operation of his
syndicate, that no alteration in the method of
disposing of the fished oysters was likely to be
adopted and that there was greater likelihood of
his being better under a Company than if the
pearl fishery had remained in the hands of
Government. This assurance also led Mr.
Solomon's syndicate not pursuing any inquiries
regarding the at that time, intended leasing of
the Pearl Bank. For we are assured that so
impressed was the syndicate with the feasibility
of Mr. Solomon's scheme that it had almost
determined to make a bid for the lease. The
result, however, has proved the utter falsification
of these hopes. After practically inducing the
syndicate to pitch its camp in Ceylon and
embark upon a heavy expenditure in establish-
ing a settlement on the erstwhile desert island
of Ipantiva and after Mr. Solomon had been able
to demonstrate the complete success of his
experiment and establish the remarkable
profitabilities of his scheme, after encouraging
him a stranger to Ceylon, to settle and start a
new industry—the representatives of the Ceylon
Company of Pearl Fishers, Ltd., coolly turned
their backs upon Mr. Solomon.

A word as to Mr. Solomon's system. The
fundamental idea was to save the life of the
pearl oyster found to contain immature or seed
pearls. The idea of applying "X" rays
to ascertain this fact, Mr. Solomon invented a
process, whereby great quantities of oysters
could in a commercial manner be dealt with by
the "X" rays. He succeeded in demonstrating
that the application of this scientific process
would have no deleterious effects upon the life
of the oyster. His plan was to replace those
oysters found to contain immature or seed
pearls into their natural habitat and await
development. The idea of applying "X" rays
to determine the value of the liquor came to
Mr. Solomon as a chance thought, but the
experiments first made in New York were
happily confirmed when these were continued
in Ceylon. The necessary exposure is of such
short duration that the oyster is in no
wise injured by the process. With
a view to turning his discovery to
practical account Mr. Solomon had recourse to
the Consul Department, U.S.A., and by
this means was brought into contact with a late
official in the service of the Ceylon Government
who, from an original condition of utter
disbelief in such methods, was gradually
converted into an enthusiastic supporter. Mr.
Solomon was urged to go to Ceylon and
vent in obedience to summons in the full
confidence and belief that he would be afforded
reasonable facilities for carrying on his opera-
tions, even though the Pearl Fisheries had
passed from the charge of the Govern-
ment into the hands of a private company.
Soon after his arrival in Ceylon he sought an
interview with H. E. the Governor who,
however, referred him to the Colonial
Secretary, thereby losing an opportunity of learn-
ing much that would have been interesting and
illuminating. Interviews also passed between
Mr. Solomon and the local representatives of the
company, who had acquired the Pearl Fishery
right for a term of years, and nothing that
passed between these gentlemen and the
representative of the American syndicate led
the latter to anticipate any difficulties in being
able to carry out his operations without let or
hindrance. In fact, after the lease of the Pearl
Fisheries had been concluded Mr. Solomon was
still urged to proceed to Ceylon and the
additional advantage was pointed out to him of
being able to deal with business-people, quick to
perceive the potentialities of a scheme that
could not possibly conflict with the Company's
operations.

In consequence of these assurances, Mr.
Solomon refused a tempting offer made at that
time to come to Japan. Mr. Solomon, we un-
derstand, had had no occasion to complain of the
treatment he has received at the hands of
officials of the Government Departments in
Ceylon. He was treated with uniform courtesy
by all with whom he came into contact and was
readily granted such little concessions as was
necessary for the carrying out of his enterprise.
To Sir Stanley Bole, Chairman of the Ceylon
Company of Pearl Fishers, Ltd., Mr. Solomon
explained in full the nature of his enterprise,
what he intended doing, and laid emphasis on
the fact that his interests should be regarded as
mutual and not conflicting. Mr. Solomon was
invited to put his request in writing in order
that his letter might be submitted to the

Directors of the Company in London, and
immediately complied and in that letter he stated
that all he required was that the Company's
representatives in Ceylon should be authorised
to supply him, as far as it was practicable, with
live oysters so that they might continue to grow
after they had been subjected to his process.
Naturally, it would have been a great con-
venience to Mr. Solomon if the oysters he
required could have been delivered to him at the
Bank. If the company had been disposed to
render him assistance, nothing could have been
easier than arriving at some arrangement
whereby Mr. Solomon could have
taken the earliest possession of his oysters and
paid the company on the basis of the average
prices fetched by each day's catch, together
with such supplementary amount as would have
compensated the company for the trouble of
delivering the oysters at sea. But in the event
of the company not agreeing to these conditions
all Mr. Solomon asked for was that his right
take delivery of the oysters he purchased imme-
diately after the auction, and again he expressed
his willingness to pay whatever was thought a
fair amount in view of the extra trouble which
might be involved by making him this small
concession.

This letter was submitted in ample time to get
a reply from London before this year's Fishery
and up to ten days of the commencement of the
Fishery, Mr. Solomon was still under the
impression that he might rely upon receiving
every aid and encouragement from the com-
pany's representatives in Ceylon. Suddenly,
six days before the Fishery, when Mr. Solomon
had completed at great expense all arrangements
to start operations, he received a formal letter
informing him that he could not be treated in any
manner different to any other customer, that he
must buy his oysters at auction and take delivery
at ten o'clock next morning. Of course, that
meant the ruin of all Mr. Solomon's hopes.
An appeal to Sir Stanley Bole for some
modification of these harsh terms was made, and
made in vain, and Mr. Solomon was forced to
buy his oysters from the diverse sources out of
the daily catch, but thousands of those pur-
chased thus were rendered useless owing to
their being dead or dying before they reached
Mr. Solomon's settlement on the Island of
Ipantiva.

One, therefore, cannot escape the conclusion
that Mr. Solomon had not received either just
or considerate treatment at the hands of the
company, whose methods are as arbitrary as
they are unhelpful. Whether authorised or
not, Mr. Solomon was brought to Ceylon on the
representations that were made that he would
not be hampered in his operations; it was fur-
ther pointed out to him that it would be rather
advantageous than otherwise to be able to deal
with a company consisting of business men
who, once persuaded that his enterprise did not
clash or interfere with their own—and this was
admitted from the commencement out of the ne-
gotiations—would be prepared in their own in-
terests to lend him all the assistance in their
power. Mr. Solomon goes to Ceylon, invests
his capital and is then treated in a manner that
plainly shows that the company have no wel-
come for strangers, even those original and val-
uable ideas, which so far from detracting from
the company's profits most considerably aug-
ment them.

What seems to be the selfish treatment
received by Mr. Solomon at the hands of the
Ceylon company is the more remarkable when
the wastage of valuable material that goes on
under the present system is considered. It
involves the destruction of millions of oysters.
The oysters have to be opened to see what is
inside them. Mr. Solomon looks into the
oyster with the aid of the "X" rays, opens
those that have fully developed pearls and puts
back others in order that they may live and
develop the seed pearls within them. Not a
single oyster of potential value is wasted. His
system seems to be the very essence of economy
combined with cleanliness and common sense,
and it certainly seems to deserve better treat-
ment than that accorded it in Ceylon.

GOVERNMENT'S LAND REFORM BILL.

In the House of Commons, 27th May, Mr.
Lewis Harcourt introduced the Government's
Small Holdings Bill. Its main points may be
thus briefly stated—

County, borough, and parish councils will
have power to acquire land compulsorily, by sale
or lease, to sublet as all tenants or small
holdings.

There will thus be set up a class of municipal
tenants, but no peasant proprietorship.

Commissioners under the Board of Agricul-
ture, will have power to set where local
authorities fail.

Purchase or hiring prior to be fixed by arbi-
tration, and no extra cost on compulsory sale.

Minimum holding increased from 1 to 50
acres, not to exceed 50 acres, or annual value of
£50 if more than 5 acres.

Rent to tenants not to be overborne by law
costs.

Loan repayment period for local bodies to be
extended to eighty years.

A Treasury contribution of £100,000 for the
first year.

Mr. Harcourt said the Bill was brought in in
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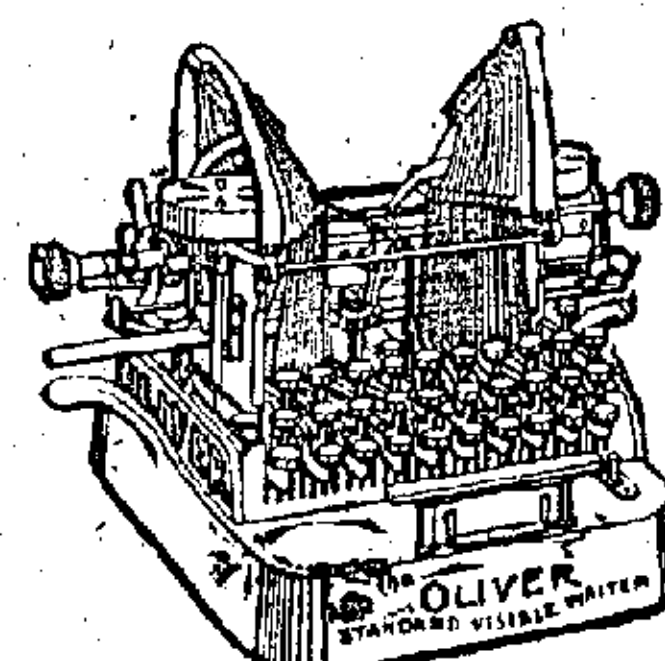
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[1055]

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